

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXEI SILVA NUEVO
(A47064345),

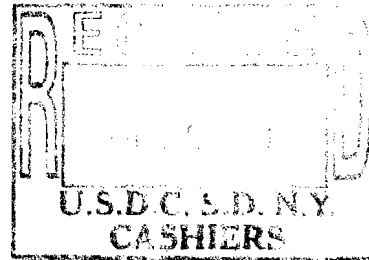
Plaintiff,

-against-

ANDREA QUARANTILLO, District Director
and UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES,

Defendants.

08 CIV 4977
COMPLAINT



Plaintiff Alex Silva Nuevo, by his undersigned attorney, alleges as follows:

1. This is an action for a judicial determination on pending naturalization application that has not been adjudicated within the time required by law. In the alternative, this is an action in the nature of mandamus and/or for declaratory and injunctive relief to compel agency action that has been unlawfully withheld and unreasonably delayed. The action arises under the Immigration & Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. §§ 1101 et seq. and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq. Subject matter jurisdiction is based upon 8 U.S.C. § 1447, 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 1361. This Court may grant relief pursuant to the Act, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and 28 U.S.C. § 1361.

2. Plaintiff Alexei Silva Nuevo ("Plaintiff") is a lawful permanent resident of the United States, resides in the Southern District of New Jersey at 261 Clinton Avenue, New Rochelle, New York, 10801.

3. Defendant Andrea Quarantillo is the District Director for the New York district of United States Citizenship & Immigration Services with responsibility for the grant and denial of naturalization application filed by residents of the Southern District of New York pursuant to 8 U.S.C. §§ 1421, 1427.

4. Defendant United States Citizenship & Immigration Services (“USCIS”) is made a party defendant for purposes of obtaining declaratory and injunctive relief pursuant to the APA and the Declaratory Judgment Act.

5. On November 29, 2004, Plaintiff filed an N-400 application for naturalization, was examined on his naturalization application at the USCIS offices at 26 Federal Plaza, New York, New York on October 5, 2005 in accordance with Section 335 of the Act, 8 U.S.C. § 1446 and passed the English language, American history, and United States government sections of the examination. Copies of the examination notice and results of interview are attached as Exhibit A. Under Section 336 of the Act, 8 U.S.C. § 1447, USCIS was required to grant or deny his naturalization application within 120 days of the date of the October 5, 2005 interview. To date, despite repeated inquiries, no decision has been rendered on his application and more than two years have now elapsed since the date of the interview.

COUNT ONE

6. Paragraphs 1 through 5 above are repeated and realleged as though fully set forth herein.

7. Plaintiff had satisfied all the prerequisites for naturalization and USCIS has failed to grant or deny his naturalization application within 120 days of the examination.

8. Under Section 336(b) of the Act, 8 U.S.C. § 1447(b), plaintiff should be granted a hearing on his naturalization application by this Court and should be naturalized.

COUNT TWO

9. Paragraphs 1 through 5 above are repeated and realleged as though fully set forth herein.

10. The continuing failure of USCIS to take the action required by law on plaintiff's naturalization application violates the Act and the APA, 5 U.S.C. § 555(b). Under the APA, 5 U.S.C. § 706(1), this Court has the power to compel agency action unlawfully withheld or unreasonably delayed. In addition, the continuing failure of USCIS to take action required by law is subject to correction by mandamus under 28 U.S.C. § 1361.

WHEREFORE, the plaintiff demands judgment:

- (a) Granting him a hearing before this Court on his naturalization application and declaring that they are entitled to be naturalized, or, in the alternative,
- (b) Ordering defendants to grant or deny his naturalization application forthwith,
- (c) Granting them costs and attorneys fees and such other and further relief that this Court may deem proper.

Dated: Newark, New Jersey
May 27, 2008

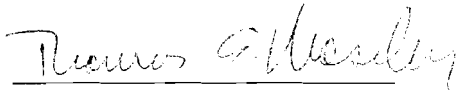
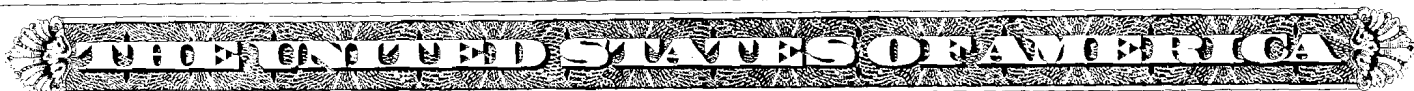


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EXHIBIT A



Request for Applicant to Appear for Naturalization Initial Interview			NOTICE DATE August 29, 2005
CASE TYPE N400 Application For Naturalization			INS A# A 047 064 345
APPLICATION NUMBER ESC*001334365	RECEIVED DATE November 17, 2004	PRIORITY DATE November 17, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS ALEXEI SILVA NUEVO 261 CLINTON AVENUE NEW ROCHELLE NY 10801 		Please come to: USCIS MANHATTAN CENTER 26 FEDERAL PLAZA USCIS 7TH FLOOR ROOM RM7-700 MAIN ROOM NEW YORK NY 10278 On (Date): Wednesday, October 05, 2005 At (Time): 08:20 AM	
<p>You are hereby notified to appear for an interview on your Application for Naturalization at the date, time, and place indicated above. Waiting room capacity is limited. Please do not arrive any earlier than 30 minutes before your scheduled appointment time. The proceeding will take about two hours. If for any reason you cannot keep this appointment, return this letter immediately to the INS office address listed below with your explanation and a request for a new appointment; otherwise, no further action will be taken on your application.</p> <p>If you are applying for citizenship for yourself, you will be tested on your knowledge of the government and history of the United States. You will also be tested on reading, writing, and speaking English, unless on the day you filed your application, you have been living in the United States for a total of at least 20 years as a lawful permanent resident and are over 50 years old, or you have been living in the United States for a total of 15 years as a lawful permanent resident and are over 55 years old, or unless you have a medically determinable disability (you must have filed form N648 Medical Certification for Disability Exception, with your N400 Application for Naturalization).</p> <p>You MUST BRING the following with you to the interview:</p> <ul style="list-style-type: none">• This letter.• Your Alien Registration Card (green card).• Any evidence of Selective Service Registration.• Your passport and/or any other documents you used in connection with any entries into the United States.• Those items noted below which are applicable to you: <p>If applying for NATURALIZATION AS THE SPOUSE of a United States Citizen;</p> <ul style="list-style-type: none">• Your marriage certificate.• Proof of death or divorce for each prior marriage of yourself or spouse.• Your spouse's birth or naturalization certificate or certificate of citizenship. <p>If applying for NATURALIZATION as a member of the United States Armed Forces;</p> <ul style="list-style-type: none">• Your discharge certificate, or form DD 214. <p>If copies of a document were submitted as evidence with your N400 application, the originals of those documents should be brought to the interview.</p> <p>PLEASE keep this appointment, even if you do not have all the items indicated above.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE USCIS 7TH FLOOR ROOM 7-700 26 FEDERAL PLAZA NEW YORK NY 10278-</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>APPLICANT COPY</p> 			

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 47 064345

On 10/5/05, you were interviewed by USCIS officer J. Fraser

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/_____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) ✓ **Congratulations! Your application has been recommended for approval.** At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ✓ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

Pending
FBI
NAME CHECK

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.